

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

EVELYN A. TORRADO

PLAINTIFF

VS.

4:05CV01848-WRW

**KIMBERLY-CLARK CORPORATION
PENSION PLAN**

DEFENDANT

ORDER

Pending is Plaintiff's lawyer's Motion for an Attorneys' Fee.¹ Defendant has not responded but Defendant has informed the court that it does not object to the motion.

This is an ERISA claim for benefits under 29 U.S.C. § 1132(a)(1)(b). Plaintiff alleged entitlement to long term disability benefits. Her benefits were awarded because Defendant was found to have acted arbitrarily.²

Plaintiff's lawyer asks for attorneys' fees and costs totaling \$3,580.00, which represents 17.9 hours at \$250.00 per hour, plus the \$250.00 filing fee.

Reasonable attorneys' fees are available, but not mandatory, under ERISA.³ A district court has discretion to award fees and costs but, the following should be considered:

- (1) the degree of the opposing parties' culpability or bad faith;
- (2) the ability of the opposing parties to satisfy an award of attorneys' fees;
- (3) whether an award of attorneys' fees against the opposing parties could deter other persons acting under similar circumstances;

¹Doc. No. 26.

²Doc. No. 23.

³29 U.S.C. § 1132(g)(1).

(4) whether the parties requesting attorneys' fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and (5) the relative merits of the parties' positions.⁴

However, these factors should not be mechanically applied to defeat the purpose of ERISA or undermine the discretion of the court.⁵

By properly applying the *Lawrence v. Westerhaus* factors, I find that the requested fee and costs are reasonable. Accordingly, the Motion for Attorney's Fees (Doc. No. 26) is GRANTED, and Defendant must pay Plaintiff's lawyer \$3,580.00.

IT IS SO ORDERED this 26th day of June, 2007.

/s/Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

⁴*Lawrence v. Westerhaus*, 749 F.2d 494, 495-96 (8th Cir. 1984).

⁵*Martin v. Arkansas Blue Cross and Blue Shield*, 299 F.3d 966, 972 (8th Cir. 2002).